

**ASSEMBLY BILL**

**No. 316**

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**Introduced by Assembly Member Spitzer**

February 13, 2007

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An act to amend Sections 1461.5, 1461.7, 2401, 2571, and 2572 of, to add Sections 2570.5, 2575, and 2576 to, to repeal Section 2573 of, and to repeal and add Sections 2570 and 2574 of, the Probate Code, relating to guardians and conservators.

LEGISLATIVE COUNSEL'S DIGEST

AB 316, as introduced, Spitzer. Guardianships and conservatorships: investments and purchase of property.

Existing law authorizes guardians and conservators, after authorization by the court, to invest the proceeds of sales and any other money of the estate as provided in the court order. Existing law also authorizes a guardian or conservator to invest funds of the estate in specified obligations and securities without court authorization.

This bill would revise and expand the list of specified obligations and securities in which a guardian or conservator may invest funds of the estate without court authorization. The bill would authorize guardians and conservators to use covered call options and put options on long positions for securities held in the guardianship or conservatorship estate, after establishing a strategy for risk mitigation. The bill would provide that except where otherwise permitted, the guardian or conservator may make investments with income and assets of the estate or the ward or conservator only after court authorization. The bill would establish standards for the management of those investments. The bill would also make conforming and technical changes.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1461.5 of the Probate Code is amended  
2     to read:  
3     1461.5. Notice of the time and place of hearing on a petition,  
4     report, or account, and a notice of the filing of an inventory,  
5     together with a copy of the petition, report, inventory, or account,  
6     shall be mailed to the office of the Veterans Administration having  
7     jurisdiction over the area in which the court is located at least 15  
8     days before the hearing, or within 15 days after the inventory is  
9     filed, if both of the following conditions exist:  
10    (a) The guardianship or conservatorship estate consists or will  
11    consist wholly or in part of any of the following:  
12    (1) Money received from the Veterans Administration.  
13    (2) Revenue or profit from such money or from property  
14    acquired wholly or in part from such money.  
15    (3) Property acquired wholly or in part with such money or from  
16    such property.  
17    (b) The petition, report, inventory, or account is filed under any  
18    one or more of the following provisions: Section 1510, 1601, 1820,  
19    1861, 1874, 2422, or 2423; Article 7 (commencing with Section  
20    2540) of Chapter 6 of Part 4; Section ~~2570~~, 2571, 2576, 2580,  
21    2592, 2610, 2613, or 2620; Chapter 8 (commencing with Section  
22    2640) of Part 4; Chapter 9.5 (commencing with Section 2670) of  
23    Part 4; Section 3080 or 3088; or Chapter 3 (commencing with  
24    Section 3100) of Part 6.  
25    SEC. 2. Section 1461.7 of the Probate Code is amended to  
26    read:  
27    1461.7. Unless the court for good cause dispenses with such  
28    notice, notice of the time and place of the hearing on a petition,  
29    report, or account, together with a copy of the petition, report, or  
30    account, shall be given to the same persons who are required to  
31    be given notice under Section 2581 for the period and in the manner  
32    provided in this chapter if both of the following conditions exist:  
33    (a) A conservator of the estate has been appointed under Article  
34    5 (commencing with Section 1845) of Chapter 1 of Part 3 for a  
35    person who is missing and whose whereabouts is unknown.

(b) The petition, report, or account is filed in the conservatorship proceeding under any one or more of the following provisions:

(1) Section 1861 or 2423.

(2) Article 7 (commencing with Section 2540) of Chapter 6 of Part 4.

(3) Section ~~2570~~, 2571, 2576, 2580, 2592, or 2620.

(4) Chapter 8 (commencing with Section 2640) of Part 4.

(5) Chapter 9.5 (commencing with Section 2670) of Part 4.

(6) Chapter 3 (commencing with Section 3100) of Part 6.

SEC. 3. Section 2401 of the Probate Code is amended to read:

2401. (a) The guardian or conservator, or limited conservator to the extent specifically and expressly provided in the appointing court's order, has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

(1) Shall exercise a power to the extent that ordinary care and diligence requires that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

(c) Notwithstanding any other law, a guardian or conservator who is not a trust company, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except upon authorization of the court. Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing his or her financial interest in the entity. For the purposes of this subdivision, "financial interest" shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or (2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly held corporation, or (3) being an officer or a director of a corporation.

(d) Notwithstanding any other law, a guardian or conservator who is a trust company, in exercising its powers may not, except upon authorization of the court, invest in securities of the trust company or an affiliate or subsidiary, or other securities from which the trust company or affiliate or subsidiary receives a financial benefit or in a mutual fund, other than a mutual fund authorized in paragraph ~~(5)~~ (4) of subdivision (a) of Section 2574,

1 registered under the Investment Company Act of 1940 (Subchapter  
2 1 (commencing with ~~See: Section~~ 80a-1) of Chapter 2D of Title  
3 15 of the United States Code), to which the trust company or its  
4 affiliate provides services, including, but not limited to, services  
5 as an investment adviser, sponsor, distributor, custodian, agent,  
6 registrar, administrator, servicer, or manager, and for which the  
7 trust company or its affiliate receives compensation.

8 Prior to authorization from the court, the guardian or conservator  
9 shall disclose to the court in writing the trust company's financial  
10 interest.

11 SEC. 4. Section 2570 of the Probate Code is repealed.

12 ~~2570. (a) The guardian or conservator, after authorization by~~  
13 ~~order of the court, may invest the proceeds of sales and any other~~  
14 ~~money of the estate as provided in the order.~~

15 ~~(b) To obtain an order of the court authorizing a transaction~~  
16 ~~under subdivision (a) of this section, the guardian or conservator,~~  
17 ~~the ward or conservatee, or any other interested person may file a~~  
18 ~~petition with the court.~~

19 ~~(c) Notice of the hearing on the petition shall be given for the~~  
20 ~~period and in the manner provided in Chapter 3 (commencing with~~  
21 ~~Section 1460) of Part 1. The court may order that the notice be~~  
22 ~~dispensed with.~~

23 ~~(d) The court may require such proof of the fairness and~~  
24 ~~feasibility of the transaction as the court determines is necessary.~~

25 ~~(e) If the required showing is made, the court may make an~~  
26 ~~order authorizing the transaction and may prescribe in the order~~  
27 ~~the terms and conditions upon which the transaction shall be made.~~

28 SEC. 5. Section 2570 is added to the Probate Code, to read:

29 2570. Except as otherwise provided by statute, a guardian or  
30 conservator may make investments with income and assets of the  
31 estate of the ward or conservator only after authorization by order  
32 of the court. The order may be obtained in the manner provided  
33 in Section 2576.

34 SEC. 6. Section 2570.5 is added to the Probate Code, to read:

35 2570.5. (a) A guardian of the estate shall manage estate  
36 investments solely for the benefit of the minor without  
37 consideration for the interests of any other person. Except as  
38 provided in this section, or unless otherwise directed by the court,  
39 the guardian may manage the estate primarily to preserve the estate,  
40 or, applying relevant principles of the Uniform Prudent Investor

Act (Article 2.5 (commencing with Section 16045) of Chapter 1 of Part 4 of Division 9), may seek a greater investment return generally consistent with a moderate risk of loss to the estate.

(b) A conservator of the estate shall generally manage estate investments solely for the benefit of the conservatee without consideration for the interests of any other person. The interests of other persons may be considered if the reasonably foreseeable needs of the conservatee will not exceed the amount of the estate, considering, periodically, the size of the conservatee's estate, state of health, and life expectancy. Except as hereinafter provided, or unless otherwise directed by the court, the conservator may manage the estate primarily to preserve the estate, or, applying relevant principles of the Uniform Prudent Investor Act (Article 2.5 (commencing with Section 16045) of Chapter 1 of Part 4 of Division 9), may seek a greater investment return generally consistent with a moderate risk of loss to the estate.

(c) A guardian or conservator of the estate shall file, with each accounting, a statement of the guardian's or conservator's investment goals and objectives during the period of the account and currently.

(d) In making and retaining investments made under this section, the guardian or conservator shall take into consideration the circumstances of the estate, indicated cash needs, and, if reasonably ascertainable, the date of the prospective termination of the guardianship or conservatorship.

SEC. 7. Section 2571 of the Probate Code is amended to read:

2571. When authorized by order of the court under Section 2570 2576, the guardian or conservator may purchase *the following*:

(a) Real property in this state as a home for the ward or conservatee if ~~such~~ *the* purchase is for the advantage, benefit, and best interest of the ward or conservatee.

(b) Real property as a home for those legally entitled to support and maintenance from the ward or conservatee if ~~such~~ *the* purchase is for the advantage, benefit, and best interest of the ward or conservatee and of those legally entitled to support and maintenance from the ward or conservatee.

SEC. 8. Section 2572 of the Probate Code is amended to read:

2572. An order authorizing the guardian or conservator to ~~purchase~~ *make an investment, including a purchase of* real property may authorize the guardian or conservator to join with the spouse

1 of the ward or the spouse or domestic partner of the conservatee  
2 or with any other person or persons in the purchase of the real  
3 property *or other investment*, or an interest, equity, or estate therein,  
4 ~~in severalty, in common, in community, or in joint tenancy~~  
5 ~~co-ownership~~, for cash or ~~upon a~~ *for* credit or for part cash and  
6 part credit. ~~When the court authorizes the purchase of real property,~~  
7 ~~the court may order the guardian or conservator to execute all~~  
8 ~~necessary instruments and commitments to complete the~~  
9 ~~transaction.~~

10 SEC. 9. Section 2573 of the Probate Code is repealed.

11 ~~2573. An order authorizing investment in bonds issued by any~~  
12 ~~state or of any city, county, city and county, political subdivision,~~  
13 ~~public corporation, district, or special district of any state may~~  
14 ~~authorize the guardian or conservator to select from among bonds~~  
15 ~~issued by any such issuer, without specifying any particular issuer~~  
16 ~~or issue of bonds, if the type of issuer is designated in general~~  
17 ~~terms and the order specifies as to such bonds a minimum quality~~  
18 ~~rating as shown in a recognized investment service, a minimum~~  
19 ~~interest coupon rate, a minimum yield to maturity, and the date of~~  
20 ~~maturity within a five-year range.~~

21 SEC. 10. Section 2574 of the Probate Code is repealed.

22 ~~2574. (a) Subject to subdivision (b), the guardian or~~  
23 ~~conservator, without authorization of the court, may invest funds~~  
24 ~~of the estate pursuant to this section in:~~

25 ~~(1) Direct obligations of the United States, or of the State of~~  
26 ~~California, maturing not later than five years from the date of~~  
27 ~~making the investment.~~

28 ~~(2) United States Treasury bonds redeemable at par value on~~  
29 ~~the death of the holder for payment of federal estate taxes,~~  
30 ~~regardless of maturity date.~~

31 ~~(3) Securities listed on an established stock or bond exchange~~  
32 ~~in the United States which are purchased on such exchange.~~

33 ~~(4) Eligible securities for the investment of surplus state moneys~~  
34 ~~as provided for in Section 16430 of the Government Code.~~

35 ~~(5) An interest in a money market mutual fund registered under~~  
36 ~~the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et~~  
37 ~~seq.) or an investment vehicle authorized for the collective~~  
38 ~~investment of trust funds pursuant to Section 9.18 of Part 9 of Title~~  
39 ~~12 of the Code of Federal Regulations, the portfolios of which are~~  
40 ~~limited to United States government obligations maturing not later~~

1 ~~than five years from the date of investment and to repurchase~~  
2 ~~agreements fully collateralized by United States government~~  
3 ~~obligations.~~

4 ~~(6) Units of a common trust fund described in Section 1564 of~~  
5 ~~the Financial Code. The common trust fund shall have as its~~  
6 ~~objective investment primarily in short-term fixed income~~  
7 ~~obligations and shall be permitted to value investments at cost~~  
8 ~~pursuant to regulations of the appropriate regulatory authority.~~

9 ~~(b) In making and retaining investments made under this section,~~  
10 ~~the guardian or conservator shall take into consideration the~~  
11 ~~circumstances of the estate, indicated cash needs, and, if reasonably~~  
12 ~~ascertainable, the date of the prospective termination of the~~  
13 ~~guardianship or conservatorship.~~

14 ~~(c) Nothing in this section limits the authority of the guardian~~  
15 ~~or conservator to seek court authorization for any investment, or~~  
16 ~~to make other investments with court authorization, as provided~~  
17 ~~in this division.~~

18 SEC. 11. Section 2574 is added to the Probate Code, to read:

19 2574. (a) The guardian or conservator, without authorization  
20 of the court, may invest funds of the estate pursuant to this section  
21 in any of the following:

22 (1) Any security issued or guaranteed by the United States, or  
23 any agency of the United States.

24 (2) General obligations of the State of California.

25 (3) Investment grade corporate debt securities registered under  
26 the Securities Exchange Act of 1933.

27 (4) An interest in a mutual fund registered under the Investment  
28 Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.).

29 (5) Securities listed on the New York Stock Exchange, American  
30 Stock Exchange, or NASDAQ.

31 (6) Units of a common trust fund described in Section 1564 of  
32 the Financial Code.

33 (7) Any other securities identified in Section 16430 of the  
34 Government Code.

35 (b) Guardians and conservators are authorized to establish a  
36 prudent strategy for risk mitigation and are permitted in  
37 effectuating that strategy to use covered call options and put options  
38 on long positions of any securities held in the guardianship or  
39 conservatorship estate.

1 (c) Nothing in this section limits the authority of the guardian  
2 or conservator to seek court authorization for any investment, or  
3 to make other investments with court authorization, as provided  
4 in that division.

5 SEC. 12. Section 2575 is added to the Probate Code, to read:

6 2575. The guardian or conservator shall keep all cash invested  
7 in interest-bearing accounts or other investments authorized by  
8 law, except any amount reasonably necessary for orderly  
9 compliance with the guardian's or conservator's duties.

10 SEC. 13. Section 2576 is added to the Probate Code, to read:

11 2576. (a) The guardian or conservator, after authorization by  
12 order of the court, may invest any money of the estate as provided  
13 in the order.

14 (b) To obtain an order of the court authorizing a transaction  
15 under subdivision (a), the guardian or conservator, ward or  
16 conservatee, or any other interested person may file a petition with  
17 the court.

18 (c) Notice of the hearing on the petition shall be given for the  
19 period and in the manner provided in Chapter 3 (commencing with  
20 Section 1460) of Part 1. The court may order that the notice be  
21 dispensed with.

22 (d) The court may require any proof of the fairness and  
23 feasibility of the transaction as the court determines is necessary.

24 (e) If the required showing is made, the court may make an  
25 order authorizing the transaction and may prescribe in the order  
26 the terms and conditions upon which the transaction shall be made.